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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------------|------------------|
| 10/663,556 | 09/16/2003 | Ernest C. Gerber | 4061-91 | 2590 |
| 7590 | 06/20/2005 | | | |
| Woodard, Emhardt, Moriarty, McNett & Henry LLP Bank One Center/Tower Suite 3700 111 Monument Circle Indianapolis, IN 46204-5137 | | | EXAMINER SORKIN, DAVID L | |
| | | | ART UNIT 1723 | PAPER NUMBER |
| DATE MAILED: 06/20/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/663,556 | GERBER, ERNEST C. |
| | Examiner | Art Unit |
| | David L. Sorkin | 1723 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 14 October 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 11-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 11-14 and 17-20 is/are rejected.
- 7) Claim(s) 15,16,21 and 22 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 16 September 2003.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Claim Objections

1. In claim 21, the period at the end of line 4 should be a semicolon.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 18 and 19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. These claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. Claim 18 recites "a plurality of valves, each valve of said plurality being associated with a different one of said source to normally prevent passage of the ingredients to said blending chamber". However, the originally filed disclosure only describes a plurality of valves (36) which prevents backflow from the blending chamber. Essentially, claim 18 recites the opposite of what was originally described. Prevention of passage of material to the blending chamber by a plurality of valves was not described.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 11, 14, 17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Potters et al. (US 3,130,070). Regarding claim 11, Potters ('070) discloses a blending and dispensing assembly having an inlet end (near 6) and a discharge end (near 52), said inlet end being configured to fit and seal against a base product delivery end outlet of a flowable mixture dispensing head (6), said assembly having a blending chamber (30); a manifold (34, 43, 48) on said assembly with multiple passageways (43,38) in the manifold for delivery of fluid ingredients in a first direction from outside said assembly into said chamber; an auger (5) in said blending chamber and operable to move a mixture from said blending chamber to an outlet (52) at said discharge end; and a blender motor (10) coupled to said auger to actuate said auger. Regarding claim 14, said auger has at least one helical flight (8) from one end of the auger to the other end of the auger (see Fig. 1), said flight having interruptions (22) along it to enable back flow of the mixture along the length of the auger during rotation of the auger. Regarding claim 17, Potters ('070) discloses a blending and dispensing assembly having an inlet end (near 6) and a discharge end (near 52), said inlet end being configured to fit and seal against a base product delivery end outlet of a flowable mixture dispensing head (6), said assembly having a blending chamber (30); a plurality of ingredient sources (40, 45) storing different ingredients for addition to a base product in a direction from outside said assembly into said chamber; an auger (5) in said blending chamber and operable to move a mixture from said blending chamber to an outlet (52) at said discharge end; and a blender motor (10) coupled to said auger to

actuate said auger. Regarding claim 20, said auger has at least one helical flight (8) from one end of the auger to the other end of the auger (see Fig. 1), said flight having interruptions (22) along it to enable back flow of the mixture along the length of the auger during rotation of the auger.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 12, 13, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Potters et al. (US 3,130,070) in view of Borys (US 3,251,508). In the apparatus of Potters ('070) discussed above, the claimed pluralities of valves are not disclosed. Borys ('508) teaches a plurality of one-way valves (19, 28) and shut off valves (16,25) as well as control valves (17,26). It would have been obvious to one of ordinary skill in the art to have provided the apparatus of Potters ('070) with the claimed plurality of valves to control flow as taught by Borys ('508). See col. 2, lines 8-25 and col. 3, lines 27-33. Regarding claims 13 and 19, said auger has slots (22).

Allowable Subject Matter

8. Claims 15, 16, 21 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David L. Sorkin
Primary Examiner
Art Unit 1723

DLS